



DEPARTMENT OF VETERANS AFFAIRS

8230-01

48 CFR Parts 832 and 852

RIN 2900-AN97

VA Acquisition Regulation: Electronic Submission of Payment Requests

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to amend its acquisition regulations to require contractors to submit payment requests in electronic form in order to enhance customer service, departmental productivity, and adoption of innovative information technology, including the appropriate use of commercial best practices.

DATES: Comments must be received by VA on or before [insert date 60 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: Written comments may be submitted through www.Regulations.gov; by mail or hand-delivery to Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Ave., NW, Room 1068, Washington, DC 20420; or by fax to (202) 273-9026. Comments should indicate they are submitted in response to "RIN 2900-AN97 – VA Acquisition Regulation: Electronic Submission of Payment Requests." Copies of comments received will be available for public inspection in the Office of

Regulation Policy and Management, Room 1063B, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461-4902 for an appointment. (This is not a toll free number.) In addition, during the comment period, comments are available online through the Federal Docket Management System (FDMS) at www.Regulations.gov.

FOR FURTHER INFORMATION CONTACT: Tanya Reid, Procurement Policy Service (003A2A), Department of Veterans Affairs, 810 Vermont Ave., NW, Washington, DC 20420, (202) 461-7178. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION:

On July 7, 2009, VA published a notice, in the Federal Register at 74 FR 32223, of a class deviation to Federal Acquisition Regulation (FAR) 32.905 (48 CFR 32.905), which added an interim electronic invoicing clause in the VA Acquisition Regulation (VAAR). The interim clause strongly encourages contractors to voluntarily submit invoices electronically, which VA determined would improve the accuracy and efficiency of payment processing. Under this interim clause, contractors who choose to use electronic invoicing have three options to submit payment requests in electronic form: (1) Electronic Invoice Presentment and Payment System; (2) American National Standards Institute (ANSI) X12 electronic data interchange (EDI) formats; or (3) another electronic form as prescribed by the contract administration office and the designated agency office. VA's notice regarding interim, optional electronic invoicing noted

VA intended to initiate notice-and-comment rulemaking to amend the VAAR to make electronic invoicing mandatory.

Mandatory electronic invoice submission is necessary to enhance compliance and/or consistency with a long history of rules and regulations governing the accuracy, timeliness, and cost-effectiveness of the Federal Government's payment process.

In 1982, Congress enacted the Prompt Payment Act ("Act"), Public Law 97-177, to require Federal agencies to pay their bills on a timely basis, to pay interest penalties when payments are made late, and to take discounts only when payments are made by the discount date. The Act, as amended, is found at 31 U.S.C. Chapter 39. To implement the Act, the Office of Management and Budget (OMB) issued Circular A-125 ("Prompt Payment ") in August 1982 (47 FR 37321). In response to changes to the Act that Congress made in the Prompt Payment Act Amendments of 1988, Public Law 100-496, OMB revised Circular A-125 in December 1989 (54 FR 52700). On June 17, 1998, OMB requested public comments on proposed revisions to Circular A-125 (63 FR 33000). The Circular was updated to reflect the increased use of electronic commerce in the Federal government and in the private sector, including electronic financial systems and electronic funds transfer. OMB responded to the comments that were received on the proposed revisions, issued final revisions to its Prompt Payment Circular, and codified these revisions in new part 1315 of 5 CFR (64 FR 52580). With the incorporation of the Prompt Payment rules into 5 CFR part 1315, OMB rescinded Circular A-125.

The prompt payment rules at 5 CFR part 1315 address the increased use of electronic commercial financial systems and promote the use of government credit cards and accelerated payment methods. This proposed rule enhances compliance with 5 CFR part 1315 by requiring the use of electronic commerce. Electronic invoice submission replaces payment delays from traditional postal delivery with immediate electronic transmission of data. As a result, VA's ability to make timely payments, reduce interest penalties on late payments, and increase the dollar amount of discounts realized from prompt payment is improved.

FAR subpart 32.9 (48 CFR part 32.9) prescribes policies, procedures, and clauses for implementing the prompt payment regulations at 5 CFR part 1315. In relevant part, FAR 32.903 requires federal agencies to establish policies and procedures necessary to implement FAR subpart 32.9, and provides the agencies the latitude to prescribe additional standards for establishing invoice payment due dates necessary to support agency programs and foster prompt payment to contractors as well as the latitude to adopt different payment procedures in order to accommodate unique circumstances, provided that such procedures are consistent with the policies in OMB's prompt payment regulations. This proposed rule enhances compliance with FAR 32.903 by requiring electronic invoice submission. Electronic invoice submission replaces payment delays from traditional postal delivery with immediate electronic transmission of data. By eliminating delays associated with traditional

processing, electronic submission fosters the prompt payment of invoices to contractors.

FAR 32.905(b)(1) defines the specific data elements that must be included on a proper invoice. Electronic invoice submission ensures invoice validity by employing automated data validation. Automated data validation enforces data element accuracy and completeness. Invalid invoices are immediately returned to the contractor for correction without the delays associated with traditional postal delivery.

VA's proposed requirement for contractors to use electronic invoicing when submitting payment requests supports several of the principal purposes stated in section 2 of the E-Government Act of 2002, Public Law 107-347, including promoting the use of the Internet and other information technologies to provide increased opportunities for citizen participation in Government, improving the ability of the Government to achieve agency missions and program performance goals, reducing costs and burdens for businesses and other Government entities, and transforming agency operations by utilizing, where appropriate, best practices from public and private sector organizations. Further, section 202(b)(3) of the E-Government Act of 2002 requires Federal agencies to develop performance measures that demonstrate how electronic government enables progress towards agency objectives, strategic goals, and statutory mandates, and specifically directs agencies to consider: (1) customer service; (2) agency productivity; and (3) the adoption of innovative information technology, including the appropriate use of commercial best practices. VA anticipates that

this rulemaking requiring contractors to use electronic invoicing to submit payment requests would reflect positively when rated against the aforementioned performance measures given that it would ensure superior customer service, increase agency productivity, and be consistent with the longstanding best practice of electronic invoicing and direct deposit in the commercial marketplace.

The Improper Payments Information Act of 2002, Public Law 107-300, enacted on Nov. 26, 2002, as amended by the Improper Payments Elimination and Recovery Act of 2010 (IPERA), Public Law No. 111-204, enacted on July 22, 2010, requires Federal agencies to annually review the programs it oversees and determine if those programs and activities may be susceptible to significant erroneous payments. Section 2(h)(4) of IPERA requires the head of each agency to conduct a financial management improvement program, consistent with rules prescribed by the Director of OMB. In conducting the program, the head of the agency shall, as the first priority of the program, address problems that contribute directly to agency improper payments and may seek to reduce errors and waste in other agency programs and operations.

Executive Order 13520 of November 20, 2009 (“Reducing Improper Payments”) directed the Federal Government to make every effort to confirm that the right recipient is receiving the right payment for the right reason at the right time. This proposed rule would address problems that contribute to improper payments such as data entry errors, manual processing errors, incorrect vendor selection, duplicate payments, and payment delays while eliminating the waste associated with traditional payment processing.

Other Federal Government departments and agencies have implemented similar electronic invoice submission requirements. In January 2004, the Department of Defense updated the Defense Federal Acquisition Regulation Supplement (DFARS) to reflect the new electronic invoicing mandate. DFARS 252.232-7003 (48 CFR 252.232-7003) outlines the electronic invoice submission process for contractor payments. In 2006, the U.S. Government Accountability Office issued a report to Congressional Committees entitled “DoD Payments to Small Businesses: Implementation and Effective Utilization of Electronic Invoicing Could Further Reduce Late Payments” (GAO-06-358). The report confirmed the effectiveness of electronic invoicing in eliminating paper and redundant data entry; improving data accuracy; reducing the number of lost or misplaced documents; and ultimately, improving timely payments to contractors.

The U.S. Department of the Interior issued a special notice mandating electronic submittal of invoices and exchange of payment information to its suppliers of goods and services beginning in May 2011. The U.S. Department of the Treasury mandated electronic invoicing for its commercial vendors by the end of fiscal year 2012.

VA proposes to amend the VAAR by adding subpart 832.10 and clause 852.273-76 to implement mandatory electronic invoicing as part of its strategic plan to improve the commercial vendor payment process. The automated data validation, digital transmission, and expedited payment and processing would reduce the errors inherent in a manual invoice processing system, thereby reducing improper payments. Expedited payment processes would allow VA to

take advantage of prompt payment discounts offered by its vendors thereby reducing the cost of goods and services furnished VA while simultaneously reducing the cost to contractors of manual invoice processing. As a result, VA would achieve compliance and consistency with all applicable laws governing the invoice payment process and use of information technologies.

This proposed amendment to the VAAR is anticipated to reduce the errors in the processing of contractor payments by including automated invoice data validation checks. VA's electronic invoicing system would check the contractor-submitted invoice data against contract invoice requirements and automatically refer improper or erroneous invoices back to the contractor for immediate correction. This would facilitate timely correction of administrative errors and timely payment of contractors when coupled with the existing Electronic Funds Transfer procedure (bank direct deposit) in use by VA. Automated invoice data validation checks would reduce the manual processing burden and consequent errors for both government and contractor personnel and reduce the risk of improper payment. These same data validation processes would ensure payment requests comply with applicable laws. In addition, electronic invoicing would expedite the payment process, and thereby, permit VA to take greater advantage of discounts afforded by contractors for early payment. The proposed benefits of electronic invoice submission to the contractor community would include speedier payments of balances due, as well as reduced costs due to the elimination of postage fees, and related material and supply expenses.

Currently, approximately 25 percent of the vendor community submits electronic payment requests to the VA Financial Services Center using one of two data transmission methods. Some contractors use VA's Electronic Invoice Presentment and Payment System. Other contractors use systems that rely on the standard EDI transaction sets. These methods of data transmission are discussed in more detail below.

Under proposed VAAR 832.1003-1 and VAAR 852.273-76(c), electronic invoices would be submitted by the Internet using either: (1) VA's Electronic Invoice Presentation and Payment System, or (2) any system that conforms to the X12 EDI formats established by the Accredited Standards Center (ASC) and chartered by ANSI. These are the same methods that many VA contractors are voluntarily using under VA's current interim electronic invoicing clause. See 74 FR 32223. VA's Electronic Invoice Presentation and Payment System allows invoice submission through two methods. The first method is an internet-based webform template that expands the ability of smaller contractors to utilize electronic invoicing and allows a contractor to directly upload invoice data that automatically populates VA payment systems. The second method directly interfaces with the contractor's billing system and transmits invoice data to VA payment systems. The U.S. ANSI X12 is the predominant set of standards defining the structure, format, and content of business transactions conducted through EDI. ANSI X12, chartered more than 30 years ago, develops and maintains EDI standards. Access to VA's Electronic Invoice Presentation and Payment System would be provided to contractors at no cost.

As an alternative to using the VA Electronic Invoice Presentation and Payment System, proposed VAAR 832.1003-1(b) and VAAR 852.273-76(c)(2) would also permit contractors to submit electronic invoices using any system that conforms to X12 EDI formats established by ASC and chartered by ANSI. This would allow contractors some flexibility in deciding how they want to communicate with VA. For example, some contractors may already have a system established that is compatible with above-mentioned EDI requirements in order to communicate with other federal agencies. Those contractors would be able to use that same system to submit electronic invoices to VA. Additionally, purchases paid with a Government-wide commercial purchase card are considered to be an electronic transaction for purposes of this rule, and therefore no additional electronic invoice submission is required.

In proposed VAAR 832.1003(b) and VAAR 852.273-76(e), VA proposes to include five exceptions to the mandatory use of electronic invoicing by contractors. VA proposes to allow contracting officers to require contractors to submit payment requests by mail, through the United States Postal Service, in the following circumstances. First, contracting officers may direct that contractors submit invoicing by mail for awards that are made to foreign vendors for work performed outside the United States because foreign vendors may lack Internet access, familiarity with, or ability to process an electronic invoice with the standard commercial protocols and methods in the proposed clause. Second, contracting officers may direct that contractors submit invoicing by mail for classified contracts or purchases when electronic submission and processing of

payment requests could compromise the safeguarding of classified or privacy information. In such cases, the potential damage far outweighs any efficiencies or benefits to be gained by electronic processing. Third, contracting officers may direct that contractors submit invoicing by mail for contracts awarded by contracting officers in the conduct of emergency operations, such as responses to national emergencies because such contracts may be performed in areas and under circumstances where Internet availability and electronic invoicing are not practical. Fourth, contracting officers may direct that contractors submit invoicing by mail for contracts awarded by contracting officers for solicitations or contracts in which the designated agency office (DAO) is a VA entity other than the VA Financial Services Center in Austin, Texas. Fifth, contracting officers may direct that contractors submit invoicing by mail for solicitations or contracts awarded by contracting officers in cases where the DAO does not have electronic invoicing capability as described above.

Proposed VAAR 832.1003-2 would require a contracting officer to insert the proposed contract clause, VAAR 852.273-76, Electronic Submission of Payment Requests, in all solicitations and contracts. The proposed VAAR 852.273-76 would require the electronic submission of invoices for contracts unless the contracting officer determines that one or more of the exceptions at VAAR 832.1003(b) applies. In cases where an exception would apply, the contracting officer would provide invoice mailing instructions to the contractor. The VA Financial Services Center would serve as the DAO for commercial goods and services purchased by VA, and would be the only entity which operates the

electronic invoicing capabilities as described above. Accordingly, VAAR 832.1003(b)(4) allows an exception to the electronic invoice requirement for solicitations or contracts in which the DAO is a VA entity other than the VA Financial Services Center in Austin, Texas.

Public Comments

VA welcomes public comments on all aspects of the proposed rule, however, the Department is specifically interested in feedback on the following areas: (1) While VA's voluntary compliance program has been in effect for 3 years, the VA is soliciting comment on whether a final rule should include an appropriate phase-in period for electronic reporting requirements; (2) The Department is seeking input on whether the proposal would create any significant burdens or transition costs for contractors; if so what types of costs or burdens might be imposed?; (3) While VA generally believes that the rapid pace of technological change has eliminated many challenges to full electronic commerce and internet access for contractors e.g. both current and potential federal government registrants are already required to register in the Centralized Contractor Registry (CCR), the VA is interested in comments on whether an exemption process should be included in the final rule; and, (4) Finally, VA is seeking comment on whether the elimination of the "other electronic means" option previously available under VA's voluntary program would create any undue burdens for contractors.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a “significant regulatory action,” which requires review by OMB, as “any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this Executive Order.”

The economic, interagency, budgetary, legal, and policy implications of this regulatory action have been examined and it has been determined not to be a significant regulatory action under Executive Order 12866.

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601-612. The Secretary acknowledges that this proposed rule could affect some small entities; however, the economic impact is not anticipated to be significant and is expected to be outweighed by the positive economic impact of the proposed rule. Small entities should realize a positive economic impact as a result of electronic invoice submission due to the avoidance of traditional invoicing costs such as postage and mailing supplies. VA's proposed data transmission methods for electronic invoice submission would accommodate all existing accounts receivable/billing systems that contractors are currently using to submit electronic invoices to VA. As a result, no additional hardware or software purchases by contractors are necessary to submit electronic invoices. Additionally, the VA electronic invoice payment and presentment system is provided to all contractors free of charge. No negative economic impact has been reported by small entities voluntarily using electronic invoice submission in accordance with the existing interim electronic invoicing clause in the VAAR. In 2006, the U.S. Government Accountability Office issued a report to Congressional Committees entitled "DoD Payments to Small Businesses: Implementation and Effective Utilization of Electronic Invoicing Could Further Reduce Late Payments" (GAO-06-358). The report confirmed the effectiveness of electronic invoicing in eliminating paper and

redundant data entry; improving data accuracy; reducing the number of lost or misplaced documents; and ultimately, improving timely payments to small businesses. Therefore, pursuant to 5 U.S.C. 605(b), this proposed rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Paperwork Reduction Act

This proposed rule does not impose any additional information collection requirements requiring approval of OMB under the Paperwork Reduction Act, 44 U.S.C. 3501, et seq. Collections of information referenced in VAAR Parts 832 and 852 have previously been approved in accordance with OMB prompt payment regulations at 5 CFR Part 1315. See 64 FR 52580-01. Collections relating to the submission and payment of invoices are approved under OMB Control Numbers 9000-0070 and 0102, which govern the submission of adequate documentation to support contractor requests for payment.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. This proposed rule would have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance Program

There is no Catalog of Federal Domestic Assistance program number and title for the program in this proposal.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. John R. Gingrich, Chief of Staff, Department of Veterans Affairs, approved this document on February 24, 2012, for publication.

List of Subjects

48 CFR Part 832

Government procurement.

48 CFR Part 852

Government procurement; Reporting and recordkeeping requirements.

Dated: April 12, 2012

Robert C. McFetridge,
Director of Regulation Policy and Management,
Office of the General Counsel,
Department of Veterans Affairs.

For the reasons set forth in the preamble, the Department of Veterans Affairs proposes to amend 48 CFR chapter 8 as follows:

CHAPTER 8—DEPARTMENT OF VETERANS AFFAIRS

Subchapter E--General Contracting Requirements

PART 832—CONTRACT FINANCING

1. The authority citation for part 832 continues to read as follows:

Authority: 40 U.S.C. 121(c) and 48 CFR 1.301-1.304.

2. Add subpart 832.10 to read as follows:

Subpart 832.10—Electronic Invoicing Requirements

832.1001 General.

832.1002 Definitions.

832.1003 Electronic Payment Requests.

832.1003-1 Data Transmission.

832.1003-2 Contract Clause.

Subpart 832.10—Electronic Invoicing Requirements

832.1001 General.

This subpart prescribes requirements and procedures for submitting and processing payment requests in electronic form.

832.1002 Definitions.

As used in this subpart:

- (a) Contract financing payment has the meaning given in FAR 32.001.
- (b) Designated agency office has the meaning given in 5 CFR 1315.2(m).
- (c) Electronic form means an automated system transmitting information electronically according to the accepted electronic data transmission methods identified in VAAR 832.1003-1. Facsimile, e-mail, and scanned documents are not acceptable electronic forms for submission of payment requests.
- (d) Invoice payment has the meaning given in FAR 32.001.
- (e) Payment request means any request for contract financing payment or invoice payment submitted by a contractor under a contract.

832.1003 Electronic Payment Requests.

- (a) The contractor shall submit payment requests in electronic form unless directed by the contracting officer to submit payment requests by mail. Purchases paid with a Government-wide commercial purchase card are considered to be an electronic transaction for purposes of this rule, and therefore no additional electronic invoice submission is required.

(b) The contracting officer may direct the contractor to submit payment requests by mail, through the United States Postal Service, to the designated agency office for:

(1) Awards made to foreign vendors for work performed outside the United States;

(2) Classified contracts or purchases when electronic submission and processing of payment requests could compromise the safeguarding of classified or privacy information;

(3) Contracts awarded by contracting officers in the conduct of emergency operations, such as responses to national emergencies;

(4) Solicitations or contracts in which the designated agency office is a VA entity other than the VA Financial Services Center in Austin, Texas; or

(5) Solicitations or contracts in which the VA designated agency office does not have electronic invoicing capability as described above.

832.1003-1 Data Transmission.

The contractor shall submit electronic payment requests through:

(a) VA's Electronic Invoice Presentment and Payment System (See website at <http://www.fsc.va.gov/einvoice.asp>); or,

(b) A system that conforms to the X12 electronic data interchange (EDI) formats established by the Accredited Standards Center (ASC) chartered by the American National Standards Institute (ANSI). The X12 EDI website (<http://www.x12.org>) includes additional information on EDI 810 and 811 formats.

832.1003-2 Contract Clause.

The contracting officer shall insert the clause at 852.273-76, Electronic Submission of Payment Requests, in all solicitations and contracts.

Subchapter H--Clauses and Forms

PART 852--SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. The authority citation for part 852 continues to read as follows:

Authority: 38 U.S.C. 501, 8127, 8128, and 8151-8153; 40 U.S.C. 121(c) and 48 CFR 1.301-1.304.

Subpart 852.2--Texts of Provisions and Clauses

4. Add 852.273-76 to subpart 852.2 to read as follows:

852.273-76 Electronic Submission of Payment Requests.

As prescribed in 832.1003-2, insert the following clause:

Electronic Submission of Payment Requests (XXX 2012)

(a) Definitions. As used in this clause-

(1) Contract financing payment has the meaning given in FAR 32.001.

(2) Designated agency office has the meaning given in 5 CFR 1315.2(m).

(3) Electronic form means an automated system transmitting information electronically according to the accepted electronic data transmission methods and formats identified in paragraph (c) of this clause. Facsimile, e-mail, and scanned documents are not acceptable electronic forms for submission of payment requests.

(4) Invoice payment has the meaning given in FAR 32.001.

(5) Payment request means any request for contract financing payment or invoice payment submitted by the contractor under this contract.

(b) Electronic Payment Requests. Except as provided in paragraph (e) of this clause, the contractor shall submit payment requests in electronic form.

Purchases paid with a Government-wide commercial purchase card are considered to be an electronic transaction for purposes of this rule, and therefore no additional electronic invoice submission is required.

(c) Data Transmission. A contractor must ensure that the data transmission method and format are through one of the following:

(1) VA's Electronic Invoice Presentment and Payment System. (See website at <http://www.fsc.va.gov/einvoice.asp>.)

(2) Any system that conforms to the X12 electronic data interchange (EDI) formats established by the Accredited Standards Center (ASC) and chartered by the American National Standards Institute (ANSI). The X12 EDI website (<http://www.x12.org>) includes additional information on EDI 810 and 811 formats.

(d) Invoice requirements. Invoices shall comply with FAR 32.905.

(e) Exceptions. If, based on one of the circumstances below, the contracting officer directs that payment requests be made by mail, the contractor shall submit payment requests by mail through the United States Postal Service to the designated agency office. Submission of payment requests by mail may be required for:

(1) Awards made to foreign vendors for work performed outside the United States;

(2) Classified contracts or purchases when electronic submission and processing of payment requests could compromise the safeguarding of classified or privacy information;

(3) Contracts awarded by contracting officers in the conduct of emergency operations, such as responses to national emergencies;

(4) Solicitations or contracts in which the designated agency office is a VA entity other than the VA Financial Services Center in Austin, Texas; or

(5) Solicitations or contracts in which the VA designated agency office does not have electronic invoicing capability as described above.

(End of clause)

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